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*Status: Point in time view as at 20/03/2006.*

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## STATUTORY INSTRUMENTS

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# 1981 No. 228

## Legal Aid, Advice and Assistance (Northern Ireland) Order 1981

### PART II

#### LEGAL ADVICE AND ASSISTANCE, AND LEGAL AID OTHER THAN FREE LEGAL AID AVAILABLE UNDER PART III

Legal advice and assistance

#### Persons eligible for advice and assistance

3.—(1) Advice and assistance to which this Article applies shall, subject to and in accordance with the following provisions of this Part, be available for any person if—

- (a) his disposable income does not exceed<sup>[F1]</sup> £203 a week; or
- (b) he is (directly or indirectly) in receipt of<sup>[F2]</sup> income support<sup>[F3]</sup> or an income-based jobseeker's allowance (payable under the Jobseekers (Northern Ireland) Order 1995 (S.I. 1995/2705 (N.I. 15)))<sup>[F4]</sup>,

and in either case his disposable capital does not exceed<sup>[F4]</sup> £1,000<sup>[F5]</sup> £3,000].

(2) Regulations may provide that there shall be substituted—

- (a) for the weekly sum specified in paragraph (1) such other weekly sum as may be prescribed;
- (b) for the capital sum so specified, such other capital sum as may be prescribed.

<sup>[F6]</sup>(3) Regulations made by virtue of paragraph (2)(b) may provide for the substitution of different capital sums in relation to—

- (a) advice and assistance other than assistance by way of representation; and
- (b) assistance by way of representation.]

<b>F1</b>	SR 2005/65
<b>F2</b>	<a href="#">1986 NI 18</a>
<b>F3</b>	<a href="#">2002 c. 21</a>
<b>F4</b>	SR 1992/106
<b>F5</b>	in relation to assistance by way of representation, SR 1986/241
<b>F6</b>	<a href="#">1986 NI 12</a>

#### Scope and general conditions of advice and assistance

4.—(1) Subject to paragraph (2) and Article 5 and to any prescribed exceptions and conditions, Article 3 applies to any oral or written advice given by a solicitor or, if and so far as may be necessary, counsel—

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(a) on the application of Northern Ireland law to any particular circumstances which have arisen in relation to the person seeking the advice; and

(b) as to any steps which that person might appropriately take (whether by way of settling any claim, bringing or defending any proceedings, making an agreement, will or other instrument or transaction, obtaining further legal or other advice or assistance, or otherwise) having regard to the application of Northern Ireland law to those circumstances;

and applies to any assistance given by a solicitor or, if and so far as may be necessary, by counsel to any person in taking any such steps as are mentioned in sub-paragraph ( b), whether the assistance is given by taking any such steps on his behalf or by assisting him in taking them on his own behalf.

(2) Notwithstanding anything in paragraph (1), Article 3 does not apply to any advice or assistance given to a person in connection with any proceedings before a court or tribunal—

(a) at a time when a civil aid certificate issued to him in connection with those proceedings is in force;<sup>F7F8</sup> . . .

[<sup>F8</sup>(aa) at a time when—

(i) the Commission has informed him that legal aid is available to him in connection with those proceedings under a direction given under Article 10A(1)(a) or an authorisation given under Article 10A(2)(a); or

(ii) the Lord Chancellor has informed him that legal aid is available to him in connection with those proceedings under an authorisation given under Article 10A(2)(b).

and he has not been informed by the Commission or the Lord Chancellor that such legal aid has ceased to be so available; or.]

(b) in the case of criminal proceedings, at a time when a criminal aid certificate made in respect of him for the purposes of those proceedings is in force.

(3) Save as expressly provided by this Part or by regulations made thereunder—

(a) the fact that the services of counsel or a solicitor are given by way of advice or assistance shall not affect the relationship between or rights of counsel, solicitor and client, or any privilege arising out of such relationship; and

(b) the rights conferred by this Part on a person receiving advice or assistance shall not affect the rights or liabilities of other parties to the proceedings or the principles on which the discretion of any court or tribunal is normally exercised.

(4) In this Article—

“civil aid certificate” means a certificate required in accordance with regulations made under Article 22 to be obtained as a condition of entitlement to legal aid;

“criminal aid certificate” means a certificate under Article 28(1), 29(2) or 30(3).

**F7** prosp. rep. by [2002 c. 26](#)

**F8** [2005 NI 19](#)

## Representation in proceedings

**5.—(1)** In this Part “assistance by way of representation” means any assistance given to a person by taking on his behalf any step in the institution or conduct of any proceedings before a court or tribunal, or of any proceedings in connection with a statutory inquiry, whether by representing him in those proceedings or by otherwise taking any step on his behalf (as distinct from assisting him in taking such a step on his own behalf).

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(2) Without prejudice to Article 4(2) and subject to any prescribed exceptions, Article 3 does not apply to any assistance by way of representation unless it is approved by an appropriate authority in accordance with regulations made for the purposes of this Article.

(3) Regulations may—

- (a) describe the proceedings in relation to which assistance by way of representation may be approved by reference to the court, tribunal or statutory inquiry, to the issues involved, to the capacity in which the person requiring the assistance is concerned, or in any other way;
- (b) specify, in relation to any proceedings so described, the assistance by way of representation which may be approved; and
- (c) preclude the giving of approval in the case of persons who would not be eligible for assistance if sub-paragraph ( a ) of Article 3(1) were omitted or for the weekly sum specified in that sub-paragraph there were substituted such lower weekly sum as may be prescribed.

(4) Regulations may also make provision—

- (a) as to which committees, courts, tribunals or other persons or bodies of persons are to be appropriate authorities;
- (b) as to the procedure to be followed in applying for approval, the criteria for determining whether approval should be given and the conditions which should or may be imposed; and
- (c) as to the circumstances in which approval may be withdrawn and the effect of its withdrawal.

[<sup>F9</sup>(4A) Without prejudice to paragraphs (3) and (4), regulations may make provision in relation to assistance by way of representation for purposes corresponding to those of Article 10(5A) to (5E) (legal aid for proceedings under the Children (Northern Ireland) Order 1995).]

(5) Where a person receives any assistance by way of representation in any civil proceedings before a court or any proceedings before a tribunal, then, except in so far as regulations otherwise provide, his liability by virtue of an order for costs made against him with respect to the proceedings shall not exceed the amount (if any) which is a reasonable one for him to pay having regard to all the circumstances, including the means of all the parties and their conduct in connection with the dispute; and regulations shall make provision as to the court, tribunal or person by whom that amount is to be determined and the extent to which any determination of that amount is to be final.

(6) For the purposes of any inquiry under paragraph (5) as to the means of a person against whom an order for costs has been made, his dwelling house and household furniture and the tools and implements of his trade shall be left out of account except in such cases and to such extent as may be prescribed and except as so prescribed they shall, in all parts of the United Kingdom, be protected from seizure in execution to enforce the order.

**F9** 1995 NI 2

### **Financial limit on prospective cost of advice and assistance**

6.—(1) Where a person seeks or receives any advice or assistance, then if at any time (whether before or after the advice or assistance has begun to be given) it appears to the solicitor from whom it is sought or received (or, in the case of advice or assistance sought or received from counsel, it appears to the solicitor instructing counsel) that the cost of giving it is likely to exceed the limit applicable under paragraph (2)—

- (a) the solicitor shall determine to what extent that advice or assistance can be given without exceeding that limit; and

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(b) shall not give it (or, as the case may be, not instruct counsel to give it) so as to exceed that limit except with the approval of the appropriate authority.

(2) The limit applicable under this paragraph is<sup>[F10]</sup> £88] or such other sum as may be prescribed.

(3) For the purposes of this Article the cost of giving any advice or assistance shall be taken to consist of such of the following as are applicable in the circumstances, that is to say—

(a) any expenses (including fees payable to counsel) which may be incurred by the solicitor or his firm in, or in connection with, the giving of the advice or assistance; and

(b) any charges or fees (not being charges for disbursements) which, apart from Article 7, would be properly chargeable by the solicitor or his firm in respect of the advice or assistance;

and in sub-paragraph ( b) “charges for disbursements” means charges in respect of such expenses (including fees payable to counsel) as are mentioned in sub-paragraph ( a).

(4) In sub-paragraph ( b) of paragraph (1) the reference to the approval of the appropriate authority shall, in relation to the giving of advice or assistance in any particular case, be construed as a reference to approval given in accordance with regulations by such committee or other person or body of persons as, in accordance with the provisions of regulations and of a scheme, is the appropriate committee, person or body for determining whether approval for the purposes of that sub-paragraph should be given in that case.

(5) In paragraph (4) “scheme” means a scheme for the time being in force under Article 18.

**F10** SR 1996/205

### **Contributions from persons receiving advice or assistance**

7.—(1) In respect of advice or assistance given to any person (in this Article and Article 8 referred to as “a client”), a client shall not, except in accordance with the following provisions of this Article, be required to pay any charge or fee.

(2) Where a client's disposable income exceeds<sup>[F11]</sup> £86] a week and he is not (directly or indirectly) in receipt of<sup>[F12]</sup> income support<sup>[F13]</sup> or an income-based jobseeker's allowance (payable under the Jobseekers (Northern Ireland) Order 1995)], paragraph (1) shall not exempt him from liability to pay, in respect of the advice or assistance, charges or fees up to, but not in the aggregate exceeding, such amount as may be prescribed.

(3) Regulations may provide that for the sum specified in paragraph (2) there shall be substituted such other sum as may be prescribed.

**F11** SR 2005/65

**F12** 1986 NI 18

**F13** 2002 c. 21

### **Payment of charges or fees otherwise than through client's contribution**

8.—(1) This Article applies to any charges or fees which, apart from Article 7, would be properly chargeable in respect of advice or assistance given to a client, in so far as those charges or fees are not payable by the client in accordance with that Article.

(2) In the following provisions of this Article “the solicitor”

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- (a) in relation to any advice or assistance given by a solicitor employed by a firm of solicitors, and so given in the course of that employment, or given by counsel on instructions given to him by a solicitor in the course of such employment, means that firm of solicitors, and
  - (b) in any other case, means the solicitor by whom any advice or assistance is given or, where it is given by counsel, the solicitor on whose instructions counsel gives it.
- (3) Except in so far as regulations otherwise provide, charges or fees to which this Article applies shall constitute a first charge for the benefit of the solicitor—
- (a) on any costs which (whether by virtue of a judgment or order of a court or an agreement or otherwise) are payable to the client by any other person in respect of the matter in connection with which the advice or assistance is given, and
  - (b) on any property (of whatever nature and wherever situated) which is recovered or preserved for a client in connection with that matter, including his rights under any compromise or settlement arrived at in connection with that matter to avoid or bring to an end any proceedings.
- (4) In so far as the charge created by paragraph (3) in respect of any charges or fees to which this Article applies is insufficient to meet them, the deficiency shall, subject to paragraph (5), be payable to the solicitor out of the legal aid fund.
- (5) For the purpose of determining what charges or fees would be properly chargeable as mentioned in paragraph (1), and whether there is a deficiency to be payable out of the legal aid fund in accordance with paragraph (4), charges or fees in respect of advice or assistance given to a client shall, in such circumstances as may be prescribed, be taxed or assessed in such manner as may be prescribed.

## Legal aid

### Persons eligible for legal aid

- 9.—(1) Legal aid to which this Article applies shall, subject to and in accordance with the provisions of this Part, be available for any person whose disposable income does not exceed<sup>[F14]</sup> £9,570<sup>[F15]</sup> £8,681] a year; but a person may be refused legal aid if—
- (a) his disposable capital exceeds<sup>[F16]</sup> £8,560<sup>[F17]</sup> £6,750]; and
  - (b) it appears that he can afford to proceed without legal aid.
- (2) Regulations may provide that there shall be substituted—
- (a) for the yearly sum specified in paragraph (1), such other yearly sum as may be prescribed;
  - (b) for the capital sum so specified, such other capital sum as may be prescribed.

**F14** in connection with proceedings involving a personal injury, SR 2005/66

**F15** in any other case, SR 2005/66

**F16** in connection with proceedings involving a personal injury, SR 1992/107

**F17** in any other case, SR 1992/107

### Scope and general conditions of legal aid

- 10.—(1) Subject to the following provisions of this Article, Article 9 applies to legal aid in connection with such proceedings before courts and tribunals as—
- (a) are proceedings of a description mentioned in Part I of Schedule 1; and
  - (b) are not proceedings of a description mentioned in Part II of that Schedule.

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(2) The provisions of Schedule 1 may be varied by regulations and the regulations may (without prejudice to the generality of the foregoing) describe the proceedings to be included or excluded by reference to—

- (a) the court or tribunal;
- (b) the issues involved; or
- (c) the capacity in which a person requiring legal aid is concerned.

(3) Legal aid shall consist of representation, on the terms provided for by this Part, by a solicitor and so far as necessary by counsel, including all such assistance as is usually given by a solicitor or counsel in—

- (a) the steps preliminary or incidental to any proceedings; or
- (b) in arriving at or giving effect to a compromise to avoid or bring to an end any proceedings.

(4) A person shall not be given legal aid in connection with any proceedings unless he shows that he has reasonable grounds for taking, defending or being a party thereto.

(5) A person may be refused legal aid if, in the particular circumstances of the case, it appears—

- (a) unreasonable that he should receive it; or
- (b) more appropriate that he should receive assistance by way of representation;

and regulations may prescribe the criteria for determining any question arising under sub-paragraph (b).

[<sup>F18</sup>(5A) Legal aid shall not be available—

- (a) to any Health and Social Services Board; or
- (b) to any Health and Social Services trust; or
- (c) to any other prescribed body; or
- (d) to a guardian ad litem,

for the purposes of any proceedings under the Children (Northern Ireland) Order 1995.

(5B) Regardless of paragraphs (4) and (5) and Articles 9 and 12, legal aid must be granted where a child who is brought before a court under Article 44 of the Children (Northern Ireland) Order 1995 (secure accommodation) is not, but wishes to be, legally represented before the court.

(5C) Subject to paragraph (5A) but regardless of paragraphs (4) and (5) and Articles 9 and 12, legal aid must be granted to the child in respect of whom the application is made, to any parent of such a child and to any person with parental responsibility for him within the meaning of the Children (Northern Ireland) Order 1995 to cover proceedings relating to an application for the following orders under that Order—

- (a) an order under Article 50 (a care or supervision order);
- (b) an order under Article 62 (a child assessment order);
- (c) an order under Article 63 (an emergency protection order); or
- (d) an order under Article 64 (extension or discharge of an emergency protection order).

(5D) Subject to paragraphs (4) and (5) but regardless of Articles 9 and 12, legal aid must be granted to cover proceedings relating to an appeal against an order made under Article 50 of the Children (Northern Ireland) Order 1995 to a person who has been granted legal aid by virtue of paragraph (5C).

(5E) Subject to paragraph (5A) and Articles 9 and 12 but regardless of paragraphs (4) and (5), legal aid must be granted where a person applies to be or has been joined as a party to any of the proceedings mentioned in paragraph (5C).]

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[<sup>F19</sup>(5F) Paragraphs (5B), (5C) and (5E) shall not apply to a person where the proceedings mentioned are before a court of summary jurisdiction and in respect of which that person has been granted assistance by way of representation.

(5G) Subject to paragraphs (4) and (5) but regardless of Articles 9 and 12 legal aid must be granted to cover proceedings relating to an appeal against an order made under Article 50 of the Children (Northern Ireland) Order 1995 to a person who has been granted assistance by way of representation by virtue of regulations made under Article 5(4A).]

Para. (6) rep. by 2005 NI 19

**F18** 1995 NI 2  
**F19** SR 1996/48

### [<sup>F20</sup>Exceptional legal aid

**10A.—**(1) The Lord Chancellor may by direction require that legal aid is to be available in connection with excluded proceedings in circumstances specified in the direction.

(2) If the Commission requests him to do so, the Lord Chancellor may authorise legal aid to be available in connection with any proceedings (whether excluded proceedings or not)—

- (a) in circumstances specified in the authorisation; or
- (b) in an individual case so specified.

(3) For the purposes of this Article “excluded proceedings” means proceedings before a court or tribunal which are not—

- (a) proceedings of a description mentioned in Part I of Schedule 1;
- (b) proceedings for the purposes of which free legal aid may be given under Part III; or
- (c) proceedings in relation to which assistance by way of representation may be approved under Article 5.

(4) Legal aid under a direction or authorisation under this Article shall consist of such representation, on terms provided for by the direction or authorisation, by a solicitor or by counsel (or by both) as is specified in the direction or authorisation.

(5) In paragraph (4) “representation” includes all such assistance as is usually given by a solicitor or counsel in—

- (a) the steps preliminary or incidental to proceedings; or
- (b) arriving at or giving effect to a compromise to avoid or bring an end to proceedings.

(6) A direction or authorisation under this Article may make provision about financial matters relating to legal aid under the direction (including, in particular, provision about eligibility, contributions, charges, remuneration and costs).

(7) Articles 10(3) to (5A), 11, 12, 13, 16 and 17 and Schedule 2 do not apply to legal aid under a direction or authorisation under this Article, unless they are applied (with or without modification) by the provisions of the direction or authorisation.

(8) A direction or authorisation under this Article may be varied or revoked.

(9) The Lord Chancellor must publish, or require the Commission to publish,

- (a) directions under paragraph (1) and directions varying or revoking such directions; and
- (b) authorisations under paragraph (2)(a) and authorisations varying or revoking such authorisations.

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(10) The Lord Chancellor or the Commission may publish an authorisation under paragraph (2) (b), or an authorisation varying or revoking such an authorisation, if the Lord Chancellor or the Commission considers it appropriate to do so.

(11) In this Article “the Commission” means the Northern Ireland Legal Services Commission.]

**F20** 2005 NI 19

### **Financial conditions of legal aid**

**11.**—(1) Where a person receives legal aid in connection with any proceedings—

- (a) the expenses incurred in connection with the proceedings, so far as they would ordinarily be paid in the first instance by or on behalf of the solicitor acting for him, shall be so paid except where they are paid direct from the legal aid fund as provided by this Part;
- (b) his solicitor and counsel shall not take any payment in respect of the legal aid except such payment as is directed by this Part to be made out of the legal aid fund;
- (c) he may be required to make a contribution to the legal aid fund in respect of the sums payable out of that fund on his account;
- (d) any sums recovered by virtue of an order or agreement for costs made in his favour with respect to the proceedings shall be paid to the legal aid fund;
- (e) his liability by virtue of an order for costs made against him with respect to the proceedings shall not exceed the amount, if any, which is a reasonable one for him to pay having regard to all the circumstances, including—
  - (i) the means of all the parties; and
  - (ii) the conduct of all the parties in connection with the dispute.

(2) Regulations shall make provision as to—

- (a) the court, tribunal or person by whom the amount referred to in paragraph (1)( e) is to be determined; and
- (b) the extent to which any determination of that amount is to be final.

(3) For the purpose of any inquiry under this Article as to the means of any person against whom an order for costs has been made, his dwelling house and household furniture and the tools and implements of his trade shall be left out of account except in such cases and to such extent as may be prescribed, and except as aforesaid they shall, in all parts of the United Kingdom, be protected from seizure in execution to enforce the order.

### **Contributions from persons receiving legal aid and charge on property recovered**

**12.**—(1) Where a person receives legal aid in connection with any proceedings, his contribution to the legal aid fund in respect of those proceedings may include—

- (a) if his disposable income exceeds<sup>[F21]</sup> £2,931 a year, a contribution in respect of income not greater than<sup>[F22]</sup> one third of the excess] or such other proportion of the excess or such amount as may be prescribed; and
- (b) if his disposable capital exceeds<sup>[F23]</sup> £3,000], a contribution in respect of capital not greater than the excess or such lesser amount as may be prescribed.

(2) Regulations may provide that there shall be substituted—

- (a) for the yearly sum specified in paragraph (1), such other yearly sum as may be prescribed;
- (b) for the capital sum so specified, such other capital sum as may be prescribed.



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(3) A person may be required to make any contribution to the legal aid fund in one sum or by instalments.

(4) If the total contribution to the legal aid fund made by a person in respect of any proceedings is more than the net liability of that fund on his account, the excess shall be repaid to him.

(5) Except so far as regulations otherwise provide—

(a) any sums remaining unpaid on account of a person's contribution to the legal aid fund in respect of any proceedings; and

(b) if the total contribution is less than the net liability of the legal aid fund on his account, a sum equal to the deficiency;

shall be a first charge for the benefit of the legal aid fund on any property (wherever situate) which is recovered or preserved for him in the proceedings.

(6) The reference in paragraph (5) to property recovered or preserved for any person shall include—

(a) his rights under any compromise arrived at to avoid or bring an end to the proceedings; and

(b) any sums recovered by virtue of an order for costs made in his favour in the proceedings (not being sums payable into the legal aid fund under Article 11).

(7) The charge created by paragraph (5) on any damages or costs shall not prevent a court allowing them to be set off against any other damages or costs.

(8) In this Article references to the net liability of the legal aid fund on any person's account in relation to any proceedings are references to the aggregate amount of—

(a) the sums paid or payable out of that fund on his account in respect of those proceedings to any solicitor or counsel; and

(b) if he has received any advice or assistance in connection with those proceedings or any matter to which those proceedings relate, any sums paid or payable out of that fund in respect of that advice or assistance to any solicitor,

being sums not recouped to that fund by sums which are recovered by virtue of an order or agreement for costs made in his favour with respect to those proceedings, or by virtue of any right of his to be indemnified against expenses incurred by him in connection with those proceedings.

**F21** SR 2005/66

**F22** SR 1993/121

**F23** SR 1988/255

### Remuneration of persons giving legal aid

**13.**—(1) Subject to this Part, a solicitor who has acted for a person receiving legal aid shall be paid for so acting out of the legal aid fund, and any fees paid to counsel for so acting shall also be paid out of the legal aid fund.

(2) Subject to any rules of court made by virtue of<sup>F24</sup> Article 12(3)(g) of the Family Law (Northern Ireland) Order 1993], the sums payable under paragraph (1) to a solicitor or counsel shall not exceed those allowed under Schedule 2.

(3) Nothing in this Article shall prejudice<sup>F25</sup> Article 15A(b)], and in particular—

(a) paragraph (2) shall not affect the sums recoverable by virtue of an order for costs made in favour of a person who had received legal aid or of an agreement for costs so made which provides for taxation; and

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(b) for the purpose of any such order or agreement, the solicitor who acted for the person in whose favour it is made shall be treated as having paid any counsel's fees.

(4) References in this Article to a solicitor acting for a person receiving legal aid shall be construed in accordance with Article 15(4).

**F24** 1993 NI 6

**F25** 2005 NI 19

Assessment of resources etc.

### **Assessment of disposable capital and income and of maximum contribution**

14.—(1) References in this Part to a person's disposable income or disposable capital shall be taken as referring to the rate of his income or amount of his capital after making—

- (a) such deductions as may be prescribed in respect of—
  - (i) the maintenance of dependants;
  - (ii) interest on loans;
  - (iii) income tax;
  - (iv) rates;
  - (v) rent; and
  - (vi) other matters for which the person in question must or reasonably may provide; and
- (b) such further allowances as may be prescribed to take account of the nature of his resources.

(2) Regulations may make provision as to the manner in which the rate of a person's income and the amount of his capital are to be computed for the purposes of paragraph (1), and in particular for—

- (a) determining whether any resources are to be treated as income or capital; and
- (b) taking into account fluctuations of income.

(3) The regulations shall include provisions for securing that the resources of a person seeking or receiving legal aid, advice or assistance shall be treated as not including the subject matter of the dispute.

(4) Except in so far as the regulations otherwise provide, any resources of a person's<sup>[F26]</sup> spouse or civil partner shall be treated for the purposes of this Article as that person's resources, and the regulations may also make provision, in relation to minors and any other special cases, for taking into account the resources of other persons.

(5) The regulations may also include, in relation to advice and assistance, provision as to the cases in which a person is for the purposes of Articles 3 and 7 to be taken to be (directly or indirectly) in receipt of<sup>[F27]</sup> income support<sup>[F28]</sup> or an income-based jobseeker's allowance (payable under the Jobseekers (Northern Ireland) Order 1995)].

(6) Subject to the provisions of this Article, the disposable income and disposable capital of a person applying for legal aid, and the maximum amount of his contribution to the legal aid fund in respect of any proceedings, shall be determined in accordance with regulations.

(7) Regulations for the purposes of this Article shall be made with the concurrence of the Treasury.

**F26** 2004 c. 33

**F27** 1986 NI 18

**F28** 2002 c. 21

## Solicitors and counsel

### Solicitors and counsel

**15.—**(1) Any practising<sup>F29</sup>. . . barrister shall be entitled to give advice or assistance or to act for persons receiving legal aid, unless<sup>F30</sup> he is for the time being prohibited from doing so by any determination of the General Council of the Bar of Northern Ireland, or by any determination of any such committee as may be established by that Council to determine charges preferred against barristers]

*Para. (2) rep. by 2003 NI 10*

[<sup>F29</sup>(2A) Any practising solicitor shall be entitled to give advice or assistance or to act for persons receiving legal aid unless he is for the time being excluded by an order under Article 51B(1) or (3) of the Solicitors (Northern Ireland) Order 1976 from selection under paragraph (3).]

(3) Where a person is entitled to receive legal aid, advice or assistance he himself shall be entitled to select the solicitor to act for him and, if the case requires counsel, his counsel; but this paragraph shall not prejudice the rights of solicitor or counsel where he has good reason to refuse or give up a case or entrust it to another.

[<sup>F29</sup>(4) Notwithstanding paragraph (3), a solicitor who has been selected to act for a person under that paragraph may himself select to act for that person, as the solicitor's agent, any other solicitor who is not for the time being excluded from selection under paragraph (3) by an order under Article 51B(1) or (3) of the Solicitors (Northern Ireland) Order 1976.]

**F29** 1989 NI 14

**F30** 2003 NI 10

### [<sup>F31</sup>Legal aid not to affect normal rules

**15A.** Except as expressly provided by this Part or by regulations made under it—

- (a) the fact that the services of counsel or a solicitor are given by way of legal aid does not affect the relationship between or rights of counsel, solicitor and client or any privilege arising out of such a relationship; and
- (b) the rights conferred by or under this Part on a person receiving legal aid are not to affect the rights or liabilities of other parties to the proceedings or the principles on which the discretion of any court or tribunal is normally exercised.]

**F31** 2005 NI 19

## Costs of successful unassisted parties

### Power to award costs out of the legal aid fund

**16.—**(1) Where a person receives legal aid in connection with any proceedings between him and a person not receiving legal aid (in this Article and Article 17 referred to as “the unassisted party”) and those proceedings are finally decided in favour of the unassisted party, the court by which the proceedings are so decided may, subject to the provisions of this Article, make an order for the payment to the unassisted party out of the legal aid fund of the whole or any part of the costs incurred by him in those proceedings.

(2) An order may be made under this Article in respect of costs if (and only if) the court is satisfied that it is just and equitable in all the circumstances that provision for those costs should be made

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out of public funds; and before making such an order the court shall in every case (whether or not application is made in that behalf) consider what orders should be made for costs against the person receiving legal aid and for determining his liability in respect of such costs.

(3) Without prejudice to paragraph (2), an order shall not be made under this Article in respect of costs incurred in a court of first instance, whether by that court or by any appellate court, unless—

- (a) the proceedings in the court of first instance were instituted by the party receiving legal aid; and
- (b) the court is satisfied that the unassisted party will suffer severe financial hardship unless the order is made.

(4) An order under this Article shall not be made by any court in respect of costs incurred by the unassisted party in any proceedings in which, apart from this Article, an order would not be made for the payment of his costs.

(5) Without prejudice to any other provision restricting appeals from any court, no appeal shall lie against an order under this Article, or a refusal to make such an order, except on a point of law.

(6) In this Article “costs” means costs as between party and party; but the costs in respect of which an order may be made under this Article include the costs of applying for that order.

(7) References in this Article and Article 17 to legal aid include references to assistance by way of representation.

### **Provisions supplementary to Article 16**

17.—(1) Provision may be made by regulations—

- (a) for determining the proceedings which are or are not to be treated as separate proceedings for the purposes of Article 16, or as having been instituted by the party receiving legal aid for the purposes of Article 16(3)( a);
- (b) for modifying Article 16(3)( b) in its application to an unassisted party who is concerned in proceedings only in a fiduciary, representative or official capacity; and
- (c) for regulating the procedure to be followed in connection with orders under Article 16.

(2) Regulations made by virtue of paragraph (1)( c) may in particular make provision—

- (a) for the reference of applications for orders under Article 16, or of any questions of fact relevant to such applications, for inquiry and report by a statutory officer appointed under section 70 of the Judicature (Northern Ireland) Act 1978 ;
- (b) for the exercise by a statutory officer of the powers under Article 16 of a judge of the High Court or a county court judge;
- (c) for enabling the Law Society to be heard in connection with any order under Article 16.

(3) Regulations for the purposes of paragraphs (1) and (2), in so far as they relate to statutory officers, shall not be made<sup>F32</sup> except after consultation with] the Lord Chief Justice.

(4) For the purposes of Article 16 proceedings shall be treated as finally decided in favour of the unassisted party—

- (a) if no appeal lies against the decision in his favour;
- (b) if an appeal lies against the decision with leave, and the time limited for applications for leave expires without leave being granted; or
- (c) if leave to appeal against the decision is granted or is not required, and no appeal is brought within the time limited for appeal;

and where an appeal against the decision is brought out of time, the court by which the appeal (or any further appeal in those proceedings) is determined may, if the appeal is allowed, make an order

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for the repayment by the unassisted party to the legal aid fund of the whole or any part of the sum previously paid to him in respect of those proceedings under Article 16.

(5) Where a court decides any proceedings in favour of the unassisted party and an appeal lies (with or without leave) against the decision, the court may, if it thinks fit, make or refuse to make an order under Article 16 forthwith, but any order so made shall not take effect—

- (a) where leave to appeal is required, unless the time limited for applications for leave to appeal expires without leave being granted;
- (b) where leave to appeal is granted or is not required, unless the time limited for appeal expires without an appeal being brought.

(6) Where a party begins to receive legal aid in connection with any proceedings after those proceedings have been instituted, or ceases to receive legal aid before they are finally decided, or otherwise receives legal aid in connection with part only of any proceedings, the reference in Article 16(1) to the costs incurred by the unassisted party in those proceedings shall be construed as a reference to so much of those costs as is attributable to that part.

F32 SI 1982/159

#### Administration and finance

### Functions of Law Society

*Paras. (1)#(7) rep. by 2003 NI 10*

(8) The Law Society shall as soon as possible after the end of each financial year make an annual report to the<sup>F33</sup> Lord Chancellor] on the operation and finance of this Part during that year.

(9) The<sup>F33</sup> Lord Chancellor] shall lay before Parliament a copy of each report of the Law Society.

F33 SI 1982/159

*Art. 19 rep. by 2003 NI 10*

### Accounts and audit

**20.**—(1) The Law Society shall keep such accounts with respect to the legal aid fund as the<sup>F34</sup> Lord Chancellor] may with the approval of the Treasury direct, and shall prepare in respect of each financial year a statement of accounts in such form as may be so directed.

(2) The accounts shall be audited by persons to be appointed in respect of each financial year by the<sup>F34</sup> Lord Chancellor] and in accordance with a scheme of audit approved by the<sup>F34</sup> Lord Chancellor], and the auditors shall be furnished by the Law Society with copies of the said statement and shall report to the<sup>F34</sup> Lord Chancellor] on the accounts and the said statement.

<sup>F35</sup>(3) A person shall not be appointed as an auditor in pursuance of paragraph (2) unless he is eligible for appointment as a company auditor under Article 28 of the Companies (Northern Ireland) Order 1990.]

(4) As soon as the accounts have been audited, the auditors shall send to the<sup>F34</sup> Lord Chancellor] copies of the statement of accounts and of their report, and the<sup>F34</sup> Lord Chancellor] shall send a copy of the statement and of the report to the Comptroller and Auditor-General.

(5) The Comptroller and Auditor-General—

- (a) shall examine every statement and report sent to him under paragraph (4);

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- (b) may inspect the accounts kept with respect to the legal aid fund and any records relating thereto; and
- (c) shall certify every such statement and lay a copy of it together with his report thereon before Parliament.

**F34** SI 1982/159

**F35** SR 1993/67

### **Pension rights of employees**

**21.**—(1) The Law Society shall, with the approval of the<sup>F36</sup> Lord Chancellor], make arrangements for the provision of pensions, allowances or gratuities to or in respect of persons employed by the Society whole-time for the purpose of their functions under this Part, and the arrangements may extend, with any necessary adjustments, to persons employed by the Society part-time for that purpose or (whether whole-time or part-time) for that and other purposes.

(2) The arrangements may include the establishment and administration, by the Law Society or otherwise, of a pension scheme with or without a pension fund.

(3) If the<sup>F36</sup> Lord Chancellor] so directs, receipts and expenses of the Law Society attributable to their establishment and administration of a pension scheme under this Article shall, notwithstanding anything in Article 19, be dealt with under the scheme instead of being paid into and out of the legal aid fund.

**F36** SI 1982/159

### Miscellaneous and supplementary

### **Regulations**

**22.**—(1) The<sup>F37</sup> Lord Chancellor] may make such regulations as appear to him necessary or desirable for giving effect to this Part or for preventing abuses thereof by persons seeking or receiving legal aid, advice or assistance and regulations may make different provision in relation to advice and assistance and in relation to legal aid respectively.

(2) Without prejudice to paragraph (1) or any other provision of this Order authorising the making of regulations, regulations may—

- (a) make provision as to the proceedings which are or are not to be treated as separate proceedings for the purpose of legal aid, advice or assistance, and as to the apportionment of sums recoverable or recovered by virtue of any order for costs made generally with respect to proceedings treated as separate;
- (b) regulate the procedure of any court or tribunal in relation to legal aid, advice or assistance, and in particular make provision—
  - (i) as to the taxation of costs incurred in connection with proceedings not actually begun; and
  - (ii) as to the cases in which and the extent to which a person receiving legal aid, advice or assistance may be required to give security for costs, and the manner in which that security may be given;
- (c) make provision as to the information to be furnished by a person seeking or receiving legal aid, advice or assistance;

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- (d) make provision as to the cases in which a person may be refused legal aid, advice or assistance by reason of his conduct when seeking or receiving legal aid, advice or assistance (whether in the same or in a different matter);
  - (e) make provision for the recovery of sums due to the legal aid fund and for making effective the charge created by this Part on property recovered or preserved for a person receiving legal aid, advice or assistance including provision—
    - (i) for the enforcement for the benefit of the legal aid fund of any order or agreement for costs made in favour of a person who has received legal aid, advice or assistance; and
    - (ii) for making a solicitor's right to payment out of the legal aid fund wholly or partly dependent on his performance of any duties imposed on him by regulations made for the purposes of this sub-paragraph.
- (3) Regulations may also modify any provision of this Part so far as appears to the<sup>F37</sup> Lord Chancellor] necessary to meet the special circumstances where—
- (a) a person seeking or receiving legal aid, advice or assistance—
    - (i) is not resident in Northern Ireland; or
    - (ii) is concerned in a representative, fiduciary or official capacity; or
    - (iii) is concerned jointly with or has the same interest as other persons, whether receiving legal aid, advice or assistance or not; or
    - (iv) has available to him rights or facilities making it unnecessary for him to take advantage of this Part or has a reasonable expectation of receiving financial or other help from a body of which he is a member;
  - (b) a person seeks legal aid, advice or assistance in a matter of special urgency;
  - (c) a person begins to receive legal aid, advice or assistance after having consulted a solicitor in the ordinary way with respect to the same matter, or ceases to receive legal aid, advice or assistance before the matter in question is finally settled;
  - (d) there is any relevant change of circumstances while a person is receiving legal aid, advice or assistance.
- (4) Without prejudice to paragraph (3)(a) regulations may also modify the provisions of this Part in any manner for the purposes of the application of those provisions to advice or assistance—
- (a) sought or received by a person who is under such age (not exceeding the age of eighteen years) as may be specified in the regulations; or
  - (b) sought or received on behalf of any such person by his parents or guardian or other person under whose care he is, or by a person acting for the purposes of any proceedings in Northern Ireland as his next friend or guardian.
- <sup>F38</sup>(4A) Without prejudice to the preceding provisions of this Article or any other provision of this Part authorising the making of regulations, regulations may also modify the provisions of, or of any instrument having effect under, this Part (including so much of any of those provisions as specifies a sum of money) for the purposes of the application of those provisions—
- (a) in cases where their modification appears to the Lord Chancellor necessary for the purpose of fulfilling any obligation imposed on the United Kingdom or Her Majesty's government therein by any international agreement; or
  - (b) in relation to proceedings for securing the recognition or enforcement in Northern Ireland of judgments given outside the United Kingdom for whose recognition or enforcement in the United Kingdom provision is made by any international agreement.]
- (5) The<sup>F37</sup> Lord Chancellor] shall, before making regulations as to the procedure—
- (a) of the<sup>F39</sup> Supreme Court,]<sup>F37</sup> consult] the<sup>F39</sup> Supreme Court Rules Committee;

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- (b) of county courts, consult the County Court Rules Committee;
- (c) of magistrates' courts, consult the Magistrates' Courts Rules Committee;
- (d) of any tribunal, consult any rules committee or similar body by whom or on whose advice rules of procedure for the tribunal may be made apart from this Part, or whose consent or concurrence is required for any rules so made.

(6) Regulations shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.

**F37** SI 1982/159  
**F38** 1982 c. 27  
**F39** prosp. subst. by 2005 c. 4

**Advisory committees**

**23.** <sup>F40</sup> .....

**F40** Art. 23 repealed (20.3.2006) by Access to Justice (Northern Ireland) Order 2003 (S.I. 2003/435 (N.I. 10)), arts. 1(2), 49(2), Sch. 5 (with transitional provisions and savings in art. 48(2), Sch. 3); S.R. 2006/27, arts. 1, 3

**Secrecy**

**24.**—(1) Subject to paragraph (2), information furnished for the purposes of this Part to the Law Society, or to any committee or person on their behalf, in connection with the case of a person seeking or receiving legal aid, advice or assistance shall not be disclosed otherwise than—

- (a) for the purpose of facilitating the proper performance by any committee, court, tribunal or other person or body of persons of functions under this Part; or
- (b) for the purpose of any criminal proceedings for an offence thereunder or of any report of such proceedings<sup>F41</sup> or]
- <sup>F41</sup>(c) for the purpose of facilitating the proper performance by the Solicitors Disciplinary Tribunal of its functions under the Solicitors (Northern Ireland) Order 1976 in respect of a complaint made to it under Article 44(1)(g) of that Order or in connection with the making of an order under Article 51B(1) or (3) of that Order.]

(2) Paragraph (1) shall not prevent the disclosure of information for any purpose with the consent of the person in connection with whose case the information was furnished and, where he did not furnish the information himself, with that of the person or body of persons who did furnish the information.

(3) A person who, in contravention of this Article, discloses any information obtained by him when employed by or acting on behalf of the Law Society shall be guilty of an offence and be liable on summary conviction to a fine not exceeding<sup>F42</sup> level 5 on the standard scale].

(4) Proceedings for an offence under this Article shall not be brought except by or with the consent of the Attorney General.

(5) For the avoidance of doubt it is hereby declared that information furnished to counsel or a solicitor as such by or on behalf of a person seeking or receiving legal aid, advice or assistance is not information furnished to the Law Society or a person on their behalf.

**F41** 1989 NI 14



F42 1984 NI 3

### Proceedings for misrepresentation etc.

- 25.—(1) If any person seeking or receiving legal aid, advice or assistance—
- (a) wilfully fails to comply with any regulations as to the information to be furnished by him; or
  - (b) in furnishing any information required by the regulations knowingly makes any false statement or false representation;

he shall be guilty of an offence and be liable on summary conviction to a fine not exceeding<sup>F43</sup> level 5 on the standard scale] or to imprisonment for a term not exceeding three months or to both.

(2) Notwithstanding any statutory provision prescribing the period within which summary proceedings may be commenced, proceedings for an offence under paragraph (1) may be commenced at any time within the period of six months from the date on which evidence, sufficient in the opinion of the Attorney General to justify a prosecution for the offence, comes to the knowledge of the Attorney General, or within the period of twelve months after the commission of the offence, whichever period last expires.

(3) For the purposes of paragraph (2) a certificate, purporting to be signed by the Attorney General as to the date on which such evidence has as aforesaid come to the knowledge of the Attorney General, shall be conclusive evidence thereof.

(4) A county court notwithstanding any limitation imposed on the jurisdiction of a county court under any other statutory provision shall have jurisdiction to hear and determine any action brought to recover the loss sustained by the legal aid fund by reason of—

- (a) the failure of a person seeking or receiving legal aid, advice or assistance to comply with any such regulations as aforesaid; or
- (b) a false statement or false representation made by such a person in furnishing information for the purposes of this Part.

F43 1984 NI 3

### Adaptation for purposes of Part II of rights to indemnity

26.—(1) This Article shall have effect for the purposes of adapting in relation to this Part any right (however and whenever created or arising) which a person may have to be indemnified against expenses incurred by him.

(2) In determining for the purposes of any such right the reasonableness of any expenses, the possibility of avoiding them or part of them by taking advantage of this Part shall be disregarded.

(3) Where a person having any such right to be indemnified against expenses incurred in connection with any proceedings receives legal aid, advice or assistance in connection with those proceedings, then (without prejudice to the effect of the indemnity in relation to his contribution, if any, under Article 7 or 12<sup>F44</sup> or a direction or authorization under Article 10A]) the right shall inure also for the benefit of the legal aid fund as if the expenses incurred by that fund on behalf of the said person in connection with the legal aid, advice or assistance had been incurred by him.

- (4) Where—
- (a) a person's right to be indemnified against expenses incurred in connection with any proceedings arises by virtue of an agreement and is subject to any express condition conferring on those liable thereunder any right with respect to the bringing or conduct of the proceedings; and

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(b) those liable to have been given a reasonable opportunity of exercising the right so conferred and have not availed themselves of that opportunity;

the right to be indemnified shall be treated for the purposes of paragraph (3) as not being subject to that condition.

(5) Nothing in paragraphs (3) and (4) shall be taken as depriving any person or body of persons of the protection of any statutory provision or, save as provided in paragraph (4), as conferring any larger right to recover money for the benefit of the legal aid fund in respect of any expenses than the person receiving legal aid, advice or assistance would have had if the expenses had been incurred by him.

**F44** 2005 NI 19

## Interpretation of Part II and Schedules 1 and 2

27. In this Part and Schedules 1 and 2—

“advice” and “assistance” mean respectively advice and assistance under this Part;

“assistance by way of representation” has the meaning assigned to it by Article 5(1);

“Law Society” means the Incorporated Law Society of Northern Ireland;

“legal aid” means legal aid under this Part;

“order for costs” includes any judgment, order, decree, award or direction for the payment of the costs of one party to any proceedings by another party, whether given or made in those proceedings or not;

“person” does not include a body of persons corporate or unincorporate which is not concerned in a representative, fiduciary or official capacity so as to authorise legal aid, advice or assistance to be given to such a body;

“prescribed” means prescribed by regulations;

“regulations” means regulations made by the<sup>F45</sup> Lord Chancellor] under this Part;

“solicitor” means a solicitor of the<sup>F46</sup> Supreme Court;

“statutory inquiry” means an inquiry or hearing held or to be held in pursuance of a duty imposed by any statutory provision;

“statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954 ;

“tribunal” includes an inquiry or proceedings before an arbitrator or umpire, however appointed, whether such inquiry or proceedings take place under a reference by consent or otherwise.

**F45** SI 1982/159

**F46** prosp. subst. by 2005 c. 4

**Status:**

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